

of each hogshhead, *Hinde v. Whitehouse*, 7 East, 558; otherwise, where the sample is no part of the thing sold, *Nicholson v. Bower*, 28 L. J. Q. B. 97.¹⁴³ In *Batturs v. Sellers*, 5 H. & J. 117, a pattern card was delivered to the purchasers before the sale to judge of the quality of the goods, and the Court said that the samples it contained were not to be taken into the estimate either of the quantity or price of the goods, and were neither delivered as parcels of the thing sold, nor intended as a symbolical delivery, and therefore laid it out of the case. It may be further observed, that the Statute is satisfied by proof of the acceptance and receipt, though the terms of the contract are otherwise disputed, and as to them parol evidence is admissible, *Tompkinson v. Staight*, 17 C. B. 697, where A. sold a piano to B. for above 10*l.* and delivered it at B.'s shop; B. kept it, but refused to pay for it, saying that it was delivered on an agreement that it should remain as a security for the payment of certain bills which he had discounted for A., and it was held that, there being a sufficient acceptance and receipt, parol evidence was admissible to show the terms of the bargain. The dispute there virtually was whether the piano was sold for cash or on time.

556 Receipt of goods by carrier—Bailees and agents.—*It is now settled that the receipt of goods by a carrier or wharfinger, appointed by the buyer, though a sufficient delivery to support a count for goods sold and delivered, is no acceptance, for such agent has authority only to receive, not to accept, see *Jones v. Mechanics' Bank supra*; *Meredith v. Meigh*, 2 E. & B. 364, and other cases, overruling *Hart v. Sattley*, 3 Camp. 528, to the contrary.¹⁴⁴ And if the goods are in the hands of a warehouseman or other person, as bailee of the vendor, the acceptance of a delivery-order by the purchaser will not be an acceptance of the goods, till the order is accepted by such bailee, and he has agreed to hold the goods as agent of the purchaser, even though the bailee be bound by law, when required, to hold the goods on the purchaser's account, *Bentall v. Burn*, 3 B. & C. 423;¹⁴⁵ see *Farina v. Home*, 16 M. & W. 119, where it was held that the delivery and receipt of a wharfinger's warrant (by which the goods were made deliverable to the consignee or his assignee by indorsement, on payment of charges) was not, in effect, the same thing as the *delivery and receipt of the goods*, though the retention of it would be evidence of their acceptance. So in *Franklin v. Long supra*, the seller gave the agent of the buyer a receipt in full payment for a slave, which he warranted to be sound in body and mind, and a slave for life, and at the same time gave the buyer's agent an order on the Sheriff of the County to deliver the negro, who was then confined in jail for safe-keeping.

¹⁴³ The doctrine of the text is affirmed in *Richardson v. Smith*, 101 Md. 15. But *quaere*, whether even the acceptance of a sample forming part of the goods sold is sufficient, when all the rest of the goods are shipped with a draft attached to the bill of lading, without some evidence of intention on the part of both parties that the sample shall have such effect? See pp. 21, 22 of opinion.

¹⁴⁴ *Jarrell v. Young*, 105 Md. 280; *Ruhl v. Corner*, 63 Md. 184.

¹⁴⁵ See Sales Act of 1910, [Code 1911, Art. 83, sec. 64, (3)].